

UNITED STATES OF AMERICA
POSTAL REGULATORY COMMISSION
WASHINGTON, DC 20268-0001

Before Commissioners:

Ruth Y. Goldway, Chairman;
Nanci E. Langley, Vice Chairman;
Mark Acton;
Tony Hammond; and
Robert G. Taub

Competitive Product Prices
Inbound Competitive Multi-Service Agreements with
Foreign Postal Operators
Royal PostNL BV – United States Postal Service
Bilateral Agreement (MC2010-34)
Negotiated Service Agreement

Docket No. CP2013-24

ORDER APPROVING ADDITION OF INBOUND COMPETITIVE
MULTI-SERVICE AGREEMENTS WITH FOREIGN POSTAL OPERATORS 1
NEGOTIATED SERVICE AGREEMENT (WITH ROYAL POSTNL BV)

(Issued December 26, 2012)

I. INTRODUCTION

The Postal Service seeks to include the inbound portion of a bilateral agreement with Royal PostNL BV (Agreement) within the Inbound Competitive Multi-Service

Agreements with Foreign Postal Operators 1 (MC2010-34) product.¹ For the reasons discussed below, the Commission approves the Postal Service's request.

II. BACKGROUND

Product history. The Commission added Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 (MC2010-34) to the competitive product list by operation of Order No. 546, following consideration of the Postal Service's request in Docket No. MC2010-34.² The request was based on Governors' Decision No. 10-3. Notice at 1-2. In the same order, issued in a companion docket, the Commission included the TNT Agreement within the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 (MC2010-34) product.³ The Commission later authorized the TNT Agreement as the baseline for functional equivalency analyses of other agreements proposed for inclusion within the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product.⁴

Instant docket. The Agreement is a successor to the TNT Agreement, which automatically renewed on October 1, 2012. *Id.* at 3, n.5. It concerns rates for inbound Air CP and Express Mail Service (EMS). *Id.* at 4. The Agreement is intended to take effect January 1, 2013, and to remain in effect for two years unless terminated sooner. *Id.* at 2–3.

¹ Notice of United States Postal Service of Filing Functionally Equivalent Inbound Competitive Multi-Service Agreement with a Foreign Postal Operator, December 4, 2012 (Notice). The Notice was filed pursuant to 39 CFR 3015.5.

² Order No. 546, Order Adding Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 to the Competitive Product List and Approving Included Agreement, Docket Nos. MC2010-34 and CP2010-95, September 29, 2010.

³ *Id.* "TNT Agreement" refers to the Koninklijke TNT Post BV and TNT Post Pakketservice Benelux BV agreement.

⁴ Order No. 840, Order Concerning an Additional Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 Negotiated Service Agreement, Docket No. CP2011-69, September 7, 2011, at 5.

In Order No. 1566, the Commission provided public notice of the Postal Service's filing, established a docket for consideration of the filing's consistency with applicable statutory policies and Commission regulations, appointed a Public Representative, and provided interested persons with an opportunity to comment.⁵

III. THE POSTAL SERVICE'S POSITION

Functional equivalency. The Postal Service asserts that the Agreement fits within the Mail Classification Schedule language included in Governors' Decision No. 10-3 because it offers one of the combinations of inbound competitive services described therein. *Id.* at 2-3. The Postal Service asserts that the inbound portion of the Agreement is substantially similar to the inbound portion of the baseline agreement in terms of the products being offered under the contract and the contract's cost characteristics. *Id.* at 5. It also asserts that the Agreement fits within the parameters outlined by Governors' Decision No. 10-3, which establishes the rates for Inbound Competitive Multi-Service Agreements with Foreign Postal Operators. *Id.*

The Postal Service asserts that because both the Agreement and the baseline agreement incorporate the same cost attributes and methodology, the relevant cost and market characteristics are similar, if not the same, and it does not consider that the specified differences affect either the fundamental service being offered or the fundamental structure of the agreements. *Id.* at 7. It, therefore, concludes that nothing detracts from the conclusion that these agreements are functionally equivalent in all pertinent respects. *Id.*

⁵ Notice and Order Concerning Additional Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 Negotiated Service Agreement (with Royal PostNL BV), December 5, 2012 (Order No. 1566).

IV. COMMENTS

The Public Representative filed comments in response to Commission Order No. 1566.⁶ No other comments were received.

Functional equivalence. The Public Representative concludes that the Agreement is not functionally equivalent to the baseline agreement due to changes in provisions related to performance metrics and associated penalties. *Id.* at 3. With respect to differences, he observes that Surface Parcel Post, which was included in the baseline agreement, is no longer a service offering. *Id.* He does not assert that this difference affects functional equivalency. However, the Public Representative asserts that the Agreement's inclusion of changes affecting the "performance metrics for late delivery, late information transmission, and missing information, with associated penalties" affect the similarity of the cost or market characteristics between the two agreements. *Id.* at 4. He, therefore, concludes that the Agreement is not functionally equivalent to the baseline agreement. *Id.*

Consistency with 39 U.S.C. 3633. The Public Representative concludes that the Agreement covers its attributable costs as required by 39 U.S.C. 3633 and exceeds the required minimum cost coverage for this product established by the Governors. *Id.* at 3. He states that the model indicates that the negotiated rates in the Agreement will generate sufficient revenues to cover costs, and therefore will not degrade the cost coverage of the product. *Id.* at 4.

Nonetheless, the Public Representative expresses concern that the estimated cost coverage for the Agreement appears optimistic, despite the use of a more robust contingency factor than used in the financial model underlying the TNT agreement. *Id.* at 5. He asserts that the estimated cost coverage depends heavily upon the reliability of the Postal Service's estimates of revenue and cost, especially for Air Parcel Post, and there is little margin for error. *Id.* He further asserts, with respect to the Postal

⁶ Public Representative Comments on Postal Service Notice of Filing an Additional Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 Negotiated Service Agreement (with Royal PostNL BV), December 14, 2012 (PR Comments).

Service's reliance on EMS data from the Foreign Post Settlement (FPS) system data, that there is a significant change in the volume and weight of inbound EMS reported for the Netherlands as compared to the International Cost and Revenue Analysis (ICRA), and notes he has previously objected to this practice. *Id.*

V. COMMISSION ANALYSIS

The Commission's responsibility is to ensure that the Agreement is functionally equivalent to the baseline agreement and satisfies the requirements of Commission rules 3015.5 and 3015.7 and 39 U.S.C. 3633.

Functional equivalence. The Public Representative asserts that the changes to provisions in the Agreement related to performance metrics and associated penalties result in a lack of functional equivalence to the baseline agreement. *Id.* The Commission appreciates the Public Representative's attention to identifying differences between the two agreements, as the scope and extent of changes to underlying provisions could affect conclusions about functional equivalence. At the same time, the type of provisions the Public Representative sees as a bar to functional equivalence are built into each agreement negotiated under the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators product.

The Commission has previously determined that other agreements, with similar performance metrics and associated penalties, could be included with the Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 product.⁷ Moreover, the underlying product, Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1, is limited to foreign postal operators. Thus, the need to establish a new product due to differences in performance metrics and penalties is less compelling than might otherwise be the case. Accordingly, in this instance, the Commission does not find that the differences in assessed penalties alter the functional

⁷ See, e.g., Order No. 956, Docket No. CP2012-1, Order Concerning an Additional Inbound Competitive Multi-Service Agreements with Foreign Postal Operators 1 Negotiated Service Agreement, November 9, 2011.

equivalence of the Agreement to the baseline agreement. The Commission, therefore, concludes that the Agreement may be viewed as functionally equivalent to the baseline agreement and approves its inclusion with the Inbound Competitive Multi-Service Agreement with Foreign Postal Operators 1 (MC2010-34) product.

Section 3633 considerations. The Commission has reviewed the Notice, financial analyses provided under seal, and comments filed by the Public Representative in this proceeding. The concerns expressed by the Public Representative are not unreasonable. As he points out, however, the Agreement satisfies the statutory requirements and includes a reasonable cost contingency provision. *Id.* at 5.

Based on the information provided, the Commission finds that the Agreement should cover its attributable costs (39 U.S.C. 3633(a)(2)), should not lead to the subsidization of competitive products by market dominant products (39 U.S.C. 3633(a)(1)), and should have a positive effect on competitive products' contribution to institutional costs (39 U.S.C. 3633(a)(3)).

Follow-up submissions. The Postal Service identifies January 1, 2013 as the intended effective date of the Agreement. If this date changes, the Postal Service shall notify the Commission of the revised effective date. The Postal Service also shall notify the Commission if the Agreement terminates earlier than its scheduled term. In addition, within 30 days of expiration (or early termination) of the Agreement, the Postal Service shall file costs, volumes, and revenues data associated with the Agreement.

VI. ORDERING PARAGRAPHS

It is ordered:

1. The Agreement filed in Docket No. CP2013-24 is included within the Inbound Competitive Multi-Service Agreement with Foreign Postal Operators 1 (MC2010—34) product.

2. The Postal Service shall notify the Commission if the effective date of the Agreement differs from the intended effective date.
3. The Postal Service shall promptly notify the Commission if the Agreement terminates early.
4. Within 30 days of expiration, or early termination, of the Agreement, the Postal Service shall file costs, volumes, and revenues data associated with the Modified Agreement.

By the Commission.

Shoshana M. Grove